HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.9163 of 1997

Between

The Depot Manager, APSRTC, Tandur Depot ..Petitioner

AND

M.A.Mogni and another ..Respondents

:: JUDGMENT ::

18.4.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.9163 of 1997

Heard Sri V.T.M.Prasad, learned Standing Counsel for the A.P.S.R.T.C. and Sri S.M.Subhan, learned counsel for the first respondent workman.

This writ petition has been instituted on behalf of the employer – A.P.S.R.T.C. questioning the correctness of the award passed by the Labour Court in I.D.No.227 of 1995 which was instituted by the first respondent workman who has been handed down the punishment of removal from service. The first respondent workman was employed as a Conductor of the A.P.S.R.T.C. It was alleged against him that while a bus conducted by him was plying between Sadasivapet to Parigi, it was subjected to a check at stage No.17 at 5.50 pm on 11.9.1980 and the check has revealed that the first respondent Conductor had failed to issue tickets to as many as 26 passengers who traveled from Sadasivapet to Makvanampally despite collecting the requisite fare from them. It was also alleged that the first respondent had failed to close the statistical return in which every Conductor was liable to indicate the number of tickets issued at each stage and also enter the last three digits of the tickets of various denominations issued by him so as to prevent any possible misappropriation of revenue earned by the Corporation. A charge memo dated 22.9.1980 has been issued and the first respondent had denied his culpability. It had resulted in a disciplinary enquiry to be conducted. The Enquiry Officer had found the first respondent guilty of the charges framed against him. In view of the proven misconduct against the first respondent, the Depot

Manager, A.P.S.R.T.C., Tandoor Depot passed orders through his proceedings dated 5.5.1981 imposing the punishment of removal from service with immediate effect.

It is this order which has been called in question by the first respondent by raising a Dispute under Section 2(A)(2) of the Industrial Disputes Act. The Tribunal considered the explanation offered by the workman that only one passenger had tendered the fare for the entire batch of 26 passengers who have boarded the bus and that while he was in the process of issuing the tickets, the roof light of the bus had gone off and consequently, he could not complete the act of issuing the tickets to the passengers. That is the reason why, he could not also complete the statistical return by entering therein the necessary data. The first respondent Conductor had not chosen to cross examine the checking Officials who have been examined at the enquiry, who spoke of the misconduct of the petitioner, nor did he produce any evidence to establish that the roof light of the bus had gone off while he was in the process of issuing the tickets. The Labour Court therefore had not found any merit to accept the defence put in by the first respondent Conductor.

But however, without assigning any reasons whatsoever, it had exercised its discretion vested with it under Section 11 A of the Industrial Disputes Act and came to the conclusion that the punishment of removal from service is too harsh and too excessive. Therefore, it had modified the order of the punishment of removal to that of reinstatement into service with continuity of service and attendant benefits, but withholding three increments with cumulative effect. The Labour Court had declined to award any backwages. In the normal circumstances, the exercise of power vested in the Labour Court should have been carried out on proper and correct lines duly

assigning the reasons, thus indicating the application of mind. Once a misconduct of indulging in cash and ticket irregularities is held proved, there is hardly any room for showing any indulgence or lenience in the matter. The Public Sector Corporations providing for transport facilities for the general public can hardly run and manage their affairs without their having the support of men of honesty and integrity particularly by those who have been entrusted with the task of collecting the revenue for the Corporation by way of sale of tickets. Therefore, clearly, the exercise of discretion in these kind of cases has got to be carried out carefully and reasonably. Irrespective of the amount involved, when once an allegation of attempt of misappropriation is held proved, possibly the punishment of removal from service cannot be construed as disproportionate. There is no room for the sympathies on the part of the Labour Court to order for reinstatement into service of such men who do not have the degree of honesty and integrity required of them to function as Conductors of buses.

In normal course, I would not have hesitated to set at naught the order of reinstatement passed by the Labour Court because it had agreed with the findings recorded by the Enquiry Officer that due to failure of issuing the tickets to as many as 26 passengers, the Corporation had been attempted to be put to a loss of Rs.13/-, but for the fact that, the writ petitioner had reinstated the first respondent back to service pursuant to the award passed by the Labour Court and that the first respondent Conductor had since attained the age of superannuation as well. If only, the contract of employment between the petitioner and the first respondent is subsisting as of now, I would not have found any hesitation to set at naught the order of reinstatement passed by the Labour Court. Since it will serve no purpose,

I refrain from reversing the order passed by the labour Court. While ordering the reinstatement of the first respondent workman, it is obvious that it had weighed heavily upon the Labour Court that denial of backwages for a long period of nearly 15 years as a sufficient punishment for the first respondent workman. But unfortunately, the Labour Court had simultaneously ordered for payment of attendant benefits also. The continuity of service is one aspect of the matter while payment of the attendant benefits is altogether a different aspect of the matter. When it comes to the question of attendant benefits, the employee has not only to be treated as if he had continued in service but he will also be treated to have earned increments notionally during the period of his absence from service upon removal. For such a long period of 15 years, the petitioner had gone out of employment entirely for reasons attributable to him. Therefore, granting of attendant benefits by the Labour Court is clearly improper. By granting such relief, the employee will have to be paid wages at the same rate as are paid to those who rendered service to the Corporation diligently all through the 15 year period. Such a benefit amounts to paying a premium for the lack of integrity. Hence, it is wholly unwarranted. I therefore modify the award passed by the Labour Court to the extent of setting aside the order awarding the attendant benefits in favour of the first respondent workman. Since the Labour Court had already ordered for punishment of withholding three increments with cumulative effect and denied the backwages, I do not consider that it will serve any rational purpose by reversing the orders of reinstatement at this distant point of time, particularly after the first respondent had been reinstated and superannuated by afflux of time. Subject to the modification indicated above of the award passed by the Labour Court, the writ petition stands allowed, but however, without costs.

NOOTY RAMA MOHANA RAO.J.

18.4.2007
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